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No. 104

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, PETITIONER

v.

RICHARD ISAAC MENASCHE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinions of the Court of Appeals (R. 47–51) are reported at 210 F. 2d 809. The opinion of the District Court (R. 38–42) is reported at 115 F. Supp. 434.

JURISDICTION

The judgment of the Court of Appeals was entered on March 3, 1954 (R. 51). The petition for a writ of certiorari was filed on May 28, 1954, and was granted on October 14, 1954 (R. 53). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Section 405 (a) of the Immigration and Nationality Act of 1952 provides that a "right in process of acquisition" on the Act's effective date (December 24, 1952) shall be governed by prior law unless otherwise provided. Section 405 (b) provides that petitions for naturalization filed *before* the effective date of the Act shall be determined in accordance with prior law.

The question presented is whether a petition for naturalization, filed *after* the effective date of the Act by one who would not be eligible for naturalization after the Act went into effect, may, nevertheless, be determined under prior law because a declaration of intention to become a citizen had been filed before such effective date.

STATUTES INVOLVED

The savings clauses of the Immigration and Nationality Act of 1952, Section 405, 66 Stat. 280, 8 U. S. C. 1101, note, in pertinent part, provide:

> SEC. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, * * * or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect * * * any status, condition, right in process of acquisition, act, thing, * * * or matter, * * * done or existing, at the time this Act shall take effect; but

> as to all such * * * statutes [sic][1], conditions, rights, acts, things, * * * or matters the statute or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *
>
> (b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

The full text of Sections 405 (a) and 405 (b) of the 1952 Act and of the savings clauses of the Nationality Act of 1940, Sections 347 (a) and 347 (b), 54 Stat. 1168, 8 U. S. C. (1946 ed.) 747, are set forth in Appendix A, *infra*, pp. 37–38, in parallel columns so as to facilitate comparison.

Other pertinent provisions of the Immigration and Nationality Act of 1952, 66 Stat. 163, are set forth in Appendix B, *infra*, pp. 39–45, as follows: Sections 311, 313 (a), 315 (a), 316 (a), 318, 331 (d), and 334 (f). Other pertinent provisions of the Nationality Act of 1940, 54 Stat. 1137, as amended, 61 Stat. 121, are set forth in Appendix C, *infra*, p. 46, as follows: Section 307 (a) and 331.

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[1] Presumably the word "statuses" was intended.

STATEMENT

On April 24, 1953, respondent filed a petition for naturalization in the United States District Court for the District of Puerto Rico (R. 1–5). On September 24, 1953, the trial court granted this petition (R. 45) and the Court of Appeals for the First Circuit affirmed (R. 51). The pertinent facts are undisputed and may be summarized as follows:

Respondent, a French citizen by naturalization, was lawfully admitted to the United States for permanent residence on March 7, 1948 (R. 2, 43). On April 16, 1948, he filed a declaration of intention to become a United States citizen (R. 37–38). During the period between his entry and the filing of his petition for naturalization, respondent, in his capacity as an employee of an American motion picture company, had been absent from the United States during the following periods (R. 2, 17, 23–24):

April 22, 1948–March 5, 1949.
March 27, 1949–March 7, 1950.
March 19, 1950–March 5, 1951.
March 19, 1951–February 24, 1952.
June 17, 1952–June 21, 1952.
January 5, 1953–January 7, 1953.

Thus, on April 24, 1953, the date when he filed his petition for naturalization, respondent had been absent from the United States a total of forty-four months and had been physically

present in this country a total of but sixteen months.

On June 27, 1952, approximately eight months before respondent would have become eligible to be naturalized under the law then in effect, the Immigration and Nationality Act of 1952 was enacted, to become effective December 24, 1952. Section 316 (a) of this Act added to the former requirement of five years of residence immediately preceding the filing of the naturalization petition an additional requirement of actual physical presence in this country for at least one-half of this five-year period.

At the District Court hearing on respondent's petition for naturalization, the Government opposed the petition on the ground that respondent had failed to meet the thirty-month actual physical presence requirement of the 1952 Act. Concededly, respondent had complied with all legal requirements of the 1940 Act and would have been eligible for naturalization if his case were to be governed by the prior law, since he had never totally abandoned his United States residence during the preceding five years, in spite of his forty-four months abroad (R. 10).

The District Court in granting respondent's petition for naturalization (R. 45), and the Court of Appeals in affirming (R. 51), both recognized that the petition did not fall within the terms of Section 405 (b) of the 1952 Act, which specifically

excluded from the operation of that Act certain naturalization petitions pending on December 24, 1952, when the Act went into effect. Nevertheless, both courts concluded that respondent's 1948 declaration of intention gave him a "right in process of acquisition" within the meaning of the general savings provisions of Section 405 (a). It was thus held that respondent's naturalization petition, even though filed after the 1952 Act's effective date, was exempted from having to meet any of the new requirements of that Act (R. 40–42, 44–45, 49–50).[2]

SUMMARY OF ARGUMENT

Respondent's petition for naturalization was filed in April, 1953, after the effective date of the Immigration and Nationality Act of 1952. Whether respondent is entitled to be naturalized depends upon whether the savings provisions of that Act permit such a subsequently filed petition to be heard and determined under prior law. If the requirements of the 1952 Act govern, as contended by the Government, respondent concededly has no right to be naturalized and his naturalization petition was erroneously granted.

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[2] The District Court further concluded that respondent, by filing his declaration of intention, had also acquired a "condition" and a "status" within the meaning of Section 405 (a) (R. 40–42, 44–45).

A AND B

Sections 405 (a) and 405 (b) of the 1952 Act (*supra*, pp. 2–3) were derived from similar savings provisions included in Sections 347 (a) and 347 (b) of the Nationality Act of 1940. Both Acts in subsection (a) of these savings clauses include in similar broad language a provision of general applicability. Both Acts in subsection (b) of these clauses single out for specific individual consideration the hearing and determination of naturalization petitions. Thus subsection (b) of the 1952 Act provides:

> SEC. 405. * * * (b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

This subsection clearly manifests, as did the similar subsection in the 1940 Act, a strong and definite policy to exempt from having to meet the requirements of new law only certain petitions already pending on the effective date of the 1952 Act. While it is phrased, as was the earlier provision, in terms of prior law controlling the determination of certain pending naturalization petitions, this phrasing necessarily implies that all other naturalization petitions, whether pending or subsequently filed, are to be heard and

determined in accordance with the requirements of the new law.

The exceptions contained in title III do not in any way broaden the scope of this savings provision so as to bring within its operation any naturalization petition filed after the effective date of the 1952 Act. Instead, each such specific exception serves to narrow the scope of the clause, so as to make the new Act apply under certain circumstances even to pending petitions. The greater particularity of Section 405 (b) in expressly excluding five types of already pending petitions from being determined by prior law, which had not been so excluded in the 1940 Act, shows an even more obvious intent than was shown in 1940, that the provisions of the new law should govern the determination of all naturalization petitions not expressly saved by this clause.

C

Section 405 (a), the general savings clause of the 1952 Act, does not limit or qualify Section 405 (b) and is not applicable to the hearing and determination of naturalization petitions. This becomes clear from an analysis of Section 405 (a) and from the specific language of other sections of the 1952 Act.

1. Section 405 (a) is a residual savings provision in which Congress has sought to protect, "unless otherwise specifically provided", both Govern-

ment and public from a possible summary divestment of rights or interests either already acquired or in process of acquisition. However, this concern for maintaining orderly administration and preserving existing rights should not be used as an instrument for totally emasculating a companion section. Sections 405 (a) and 405 (b) should each be permitted to function consistently within the area of their applicability as intended by Congress. There is no inherent conflict between the two sections which would prevent their being applied with consistency.

2. The general terms "status", "condition", and "right in process of acquisition", used in Section 405 (a), do not apply to naturalization petitions or to any of the steps preliminary to their filing. To hold otherwise would overlook the reason for the inclusion of these particular terms in Section 405 (a), would result in nullifying Section 405 (b) and in materially weakening the intended effect of certain other provisions of the Act, and would create many serious inconsistencies and inequities which were clearly never intended, as is shown in detail pp. 24–26, 29–34, *infra*.

Furthermore, such a holding would also give a wholly unintended legal effect to the declaration of intention, which, under prior law was but a condition precedent having no independent legal effect as regards naturalization, unless and until followed, after two years, by the filing of a petition for

naturalization. Even this limited effect has been abolished and destroyed by the 1952 Act, under which the declaration of intention has been rendered wholly meaningless in so far as naturalization is concerned. Such declarations remain on a voluntary basis under the 1952 Act, only in order to preserve certain state or other local privileges which depend wholly upon being a declarant alien.

Even assuming *arguendo* that respondent could, for some purposes, have possessed a "right in process of acquisition" by his filing of a declaration of intention, no such right could have arisen for purposes of naturalization. Thus, even if Section 405 (b) had not been included in the 1952 Act, respondent would not have had a "status, condition, [or] right in process of acquisition" within the meaning of Section 405 (a).

D

The opinion of the lower court, in holding for respondent, reflects an undertone of reluctance to find that Congress had intended what the plain meaning of its 1952 enactment indicates, so as to make it unnecessary for respondent to incur further inconvenience and expense by maintaining an additional year of United States residence combined with actual physical presence. However, the wisdom or harshness of Section 405 (b) as applied to particular applicants for citizenship is not a matter for the courts' concern. Since Congress has

made known its will in clear and definite terms, its mandate must be respected. The failure of both lower courts to enforce the statute as written calls for reversal of the judgment below.

ARGUMENT

RESPONDENT'S PETITION FOR NATURALIZATION WAS IMPROPERLY GRANTED, SINCE IT WAS FILED AFTER THE EFFECTIVE DATE OF THE IMMIGRATION AND NATIONALITY ACT OF 1952, UNDER WHICH RESPONDENT WAS NOT ELIGIBLE FOR NATURALIZATION

The decision below from the First Circuit and that in No. 48, *Shomberg* v. *United States,* from the Second Circuit, now pending on certiorari before this Court, are in basic conflict as to the proper interpretation of the savings clauses contained in Sections 405 (a) and 405 (b) of the Immigration and Nationality Act of 1952 (*supra,* pp. 2–3). Each case involves a petition for naturalization filed by an alien who is not entitled to have his petition granted under the requirements of the 1952 Act, but who would be entitled to naturalization if prior law were applicable. In neither case is any claim made that the naturalization petition has been exempted from the requirements of the 1952 Act by the provisions of Section 405 (b), the only savings clause which is specifically applicable to the hearing and determination of such petitions. The common legal question is whether the general language of Sec-

tion 405 (a), as contended by each alien, should also be deemed applicable to the hearing and determination of naturalization petitions, in spite of the inconsistencies, anomalies, and apparent frustration of a clear Congressional mandate which would result from such an interpretation.

Obviously, the problem before this Court, in cases of this type, is to construe the statute so as to effectuate the manifested intent of Congress, as reflected in the language and context of the Act. What must have been intended is shown beyond any real doubt when Sections 405 (a) and 405 (b) are read together, along with the Act as a whole, in conformity with time-honored precept. When the statute is thus analyzed, as in Judge Clark's careful opinion for the Second Circuit in *Shomberg*, 210 F. 2d 82, it becomes compellingly clear that Congress never intended Section 405 (a) to qualify or limit the unambiguous provisions of Section 405 (b), or to apply to the hearing and determination of naturalization petitions.

A. SECTION 405 (B), THE ONLY SAVINGS CLAUSE IN THE 1952 ACT APPLICABLE TO THE DETERMINATION OF NATURALIZATION PETITIONS, WAS DERIVED FROM A SIMILAR PROVISION IN THE NATIONALITY ACT OF 1940, WHICH MANIFESTED A DEFINITE POLICY NOT TO EXEMPT FROM THE REQUIREMENTS OF THAT ACT ANY NATURALIZATION PETITION FILED AFTER THE EFFECTIVE DATE OF THE ACT

Section 405 of the Immigration and Nationality Act of 1952 is obviously derived, with modifica-

tions, from the savings clause provisions of Section 347 of the Nationality Act of 1940.[3]

Section 347 (a) of the 1940 Act and Section 405 (a) of the 1952 Act both contain broad language, saving, *inter alia*, the "validity" of already valid documents and proceedings, including declarations of intention and petitions for naturalization, and any act, thing, or matter existing when the respective Acts took effect, with, however, the qualifying clause "unless otherwise" provided. In addition, the 1952 Act added to this section the terms "condition," "status" and "right in process of acquisition," which had been used by the courts of appeals in *United States ex rel. Aberasturi* v. *Cain,* 147 F. 2d 449 (C. A. 2), and *Bertoldi* v. *McGrath,* 178 F. 2d 977 (C. A. D. C.), two conflicting cases involving the interpretation of Section 347 (a) and its application to certain matters *not related to petitions for naturalization.*

In addition to these general savings provisions, both Acts likewise include similar express savings provisions applicable solely and specifically to the hearing and determination of naturalization petitions. These are Section 347 (b) of

[3] The full text of all related savings clauses of both Acts is set forth in Appendix A, *infra*, pp. 37–38.

the 1940 Act and Section 405 (b) of the 1952 Act, which provide:

1940 Act—Section 347 (b)	1952 Act—Section 405 (b)
(b) Any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined within two years thereafter in accordance with the requirements of law in effect when such petition was filed.	(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

Section 405 (b) is, thus, substantially identical with the earlier provision, except for the omission of the two-year limitation. The presence of the two-year limitation in the 1940 savings clause clearly negates the possibility of prior law having been intended to apply indefinitely to naturalization matters involving subsequently filed petitions. Yet it appears that the two-year limitation was omitted in Section 405 (b) of the present Act primarily because it had resulted in needless confusion. Compare *In re Shaver*, 140 F. 2d 180 (C. A. 7) and *Petition of Hirsch*, 50 F. Supp. 638 (E. D. Pa.) with *In re McInnis*, 50 F. Supp. 303 (D. Mass.) and *Petition of La Bella*, 52 F. Supp. 980 (D. Conn.).[4] A similar intent to ex-

[4] In all four of these cases it was recognized, either expressly or implicitly, that Section 347 (b) of the 1940 Act operated so that petitions pending on the effective date of that Act and not finally heard within two years thereafter were to be heard and determined in accordance with the new law, as, of course, were all subsequently filed petitions. The con-

clude all subsequently filed naturalization petitions was obviously in the minds of the draftsmen who included in the 1952 Act the same type of savings clause solely applicable to the hearing and determination of such petitions.

In enacting both the Nationality Act of 1940 and the Immigration and Nationality Act of 1952, Congress thus singled out for similar specific individual treatment the exact circumstances under which the hearing and determination of petitions for naturalization should be saved from the application of any new requirements. Each statute selects for such treatment only certain pending petitions and specifies exactly when these are to be governed by prior law. That Congress did not refer in Sections 347 (b) of the 1940 Act and 405 (b) of the 1952 Act either to declarations of intention or to any other steps preliminary to the filing of naturalization petitions is *per se* highly compelling evidence, under the familiar doctrine of *expressio unius*, that prior law was not intended to govern where only some such preliminary step had been completed. While

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flict and confusion arose on whether the two-year clause was also intended to destroy the "validity" of such prior petitions which had not been heard within the two-year period as to those who were in fact entitled to naturalization under the new law. There seem to be no reported decisions under the 1940 Act in which it was even contended, as here, that a subsequently filed naturalization petition should be determined under the former law, because of the prior filing of a declaration of intention.

both sections are phrased in terms of prior law controlling the determination of certain pending naturalization petitions, they necessarily imply that all other petitions of this kind, whether pending or subsequently filed, are to be heard and determined in accordance with the requirements of the new law.

Even if we were to assume *arguendo* that the broad language of Sections 347 (a) and 405 (a) might properly have controlled were there no subsection (b), the inclusion of the latter in each Act automatically deprives subsection (a) of any applicability to the hearing and determination of petitions for naturalization.

B. SECTION 405 (B) IS WHOLLY UNAMBIGUOUS AND CLEARLY MANIFESTS A SIMILAR DEFINITE POLICY NOT TO EXEMPT FROM THE REQUIREMENTS OF THE 1952 ACT ANY NATURALIZATION PETITION FILED AFTER THE EFFECTIVE DATE OF THAT ACT

The mandate of Section 405 (b) is clear and wholly unambiguous. Giving these words their normal and customary meaning, Congress has fixed a simple and understandable policy, for the courts to follow, after the 1952 Act became effective, in determining the eligibility of aliens for naturalization. Petitions which had been filed before December 24, 1952, the date on which the Act took effect, and which were still pending on that date, should, with certain express exceptions, prescribed in title III of the Act, be heard and determined under the law in existence when

the petitions were filed.[5] Title III provides five categories of exceptions in Sections 311, 313 (a), 315 (a), 318 and 331 (d), the pertinent text of which is set forth in Appendix B, *infra*, pp. 39–45. None of these specific exceptions in any way broadens the scope of Section 405 (b), so as to bring within its operation any naturalization petition filed after that date. Instead, each of the five serves to narrow the scope of the clause, so as to make the 1952 Act apply even to some previously filed and still pending petitions. By necessary implication, all other naturalization petitions not specifically saved from the new law by this section, are to be determined in accordance with the requirements of the 1952 Act.

The greater particularity of Section 405 (b), in expressly excluding five types of already pending naturalization petitions from being governed by prior law, shows an even more obvious intent, than was shown by Section 347 (b) of the 1940 Act, that the provisions of the new Act should govern both the specifically excluded pending petitions as well as all naturalization petitions subsequently filed.

> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often

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[5] Section 405 (a) is found in title IV of the Act and thus is not one of the sections which is excepted from Section 405 (b).

> these words are sufficient in and of themselves to determine the purpose of the legislation. [*United States* v. *American Trucking Associations,* 310 U. S. 534, 543.]

That is the case here. Congress must be presumed to have used the words of Section 405 (b) in their usual and well-settled sense, and since those words are plain even to the legally uninitiated, there is little room for elaborate construction. See *United States* v. *Stewart,* 311 U. S. 60, 63; *Osaka Shoshen Line* v. *United States,* 300 U. S. 98, 101. It was not within the province of the court below to supplement, as it did, the terms of Section 405 (b), but only to ascertain their purpose,—"neither to add nor to subtract, neither to delete nor to distort." *62 Cases of Jam* v. *United States,* 340 U. S. 593, 596. In *United States* v. *Hood,* 343 U. S. 148, 151, this Court condemned the failure of lower courts to give effect to the "obvious, ordinary reading" of even criminal statutes, stating: "We should not read such laws so as to put in what is not readily found there. But equally we should not read out what as a matter of ordinary English speech is in."

It is undisputed that on December 24, 1952, when the Immigration and Nationality Act of 1952 went into effect, respondent alien was not eligible for naturalization under prior law, as he had not completed the requisite five years of United States residence. He was thus unable to

take advantage of the special exemption from the requirements of the 1952 Act afforded by Section 405 (b) to certain aliens whose naturalization petitions were pending on the Act's effective date. On April 24, 1953, when respondent filed his naturalization petition, he was still not eligible to become a citizen, since he had not complied with the new actual physical presence requirement of the 1952 Act. In granting respondent's petition, the courts below have failed to give the language of Section 405 (b) its plain meaning and have thus defeated a strongly expressed Congressional intent that all naturalization petitions filed after the effective date of the 1952 Act should be heard and determined in accordance with the requirements of that Act.

C. SECTION 405 (A), THE GENERAL SAVINGS CLAUSE OF THE 1952 ACT, IS NOT APPLICABLE TO THE HEARING AND DETERMINATION OF NATURALIZATION PETITIONS

The conclusion that Congress intended to make no exceptions in the case of subsequently filed naturalization petitions is supported, not only by the plain meaning of Section 405 (b), but also by other applicable well-established rules of statutory construction and by the specific language of other sections of the Immigration and Nationality Act of 1952.

In spite of the seemingly clear statement of policy contained in Section 405 (b), the courts below, in granting respondent's petition, relied

upon the undefined term "right in process of acquisition" which appears in the general savings provisions of Section 405 (a).[6] In concluding that this term was intended to apply to subsequently filed naturalization petitions wherever some preliminary step to their filing has been taken, the obvious reason for the inclusion of this term in the statute has been ignored, as has the qualifying phrase "unless otherwise specifically provided." Section 405 (b) has thus been rendered wholly redundant and unnecessary. Furthermore, serious anomalies and inconsistencies have been created, which clearly were never intended.

1. Sections 405 (a) and 405 (b) should be read together, and effect given to each

This Court's comments in *Montclair* v. *Ramsdell*, 107 U. S. 147, 152, are peculiarly appropriate to this case:

> It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed.

The proposed revision and codification of the immigration and naturalization laws which culminated in passage of the Immigration and Na-

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[6] The District Court also considered the similarly undefined terms "status" and "condition" here applicable (R. 44-45).

tionality Act on June 27, 1952, claimed the attention of Congress for more than three years, during which time country-wide hearings were held, existing statutes were examined, and judicial decisions were analyzed and compared.[7] The 1952 Act was no hastily contrived piece of legislation which might reasonably be accorded any margin for error. Unless the contrary conclusively appears, every provision of the 1952 Act must be presumed to have been inserted for a definite purpose. *McBroom* v. *Scottish Investment Company*, 153 U. S. 318, 323; *Market Company* v. *Hoffman*, 101 U. S. 112, 115–116. Therefore, except where no alternative exists, no provision should be read out of the statute, which "as a matter of ordinary English speech" has been included. *United States* v. *Hood*, 343 U. S. 148, 151; *Postmaster General* v. *Early*, 12 Wheat. 136, 147.

The court below was not at liberty, in the absence of compelling evidence to the contrary, to find that Congress wrote into Section 405 (a) a wholly meaningless and futile provision by including subsection (b), or to assume that Congress was unaware that it had also enacted the "broad and sweeping" provisions of subsection (a). The court's duty was to ascertain the will

[7] See "Commentary on the Immigration and Nationality Act," 8 U. S. C. A., 1st Vol., pp. 1–91.

of Congress from *all* of the language employed, harmonizing possibly inconsistent expressions and resolving conflict, if such appeared, so as not to defeat or destroy any part of the statute. *Carlson* v. *Landon*, 342 U. S. 524, 542; *Iglehart* v. *Iglehart*, 204 U. S. 478, 485; *Bernier* v. *Bernier*, 147 U. S. 242, 246. That court would have accomplished this result had it followed the familiar rule reaffirmed by this Court in *MacEvoy Co.* v. *United States*, 322 U. S. 102, 107.

> However inclusive may be the general language of a statute, it "will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same or another statute which might otherwise be controlling." *Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 208.

Section 405 (a) is in the nature of a residual savings provision in which Congress, exercising wide latitude, has sought to protect, "unless otherwise specifically provided" both Government and public from possible summary divestment of rights or interests, acquired or in process of acquisition. It is, as the lower court said, "broad and sweeping in its terms," and so indeed Congress intended it should be. However, this laudable concern on the part of Congress for maintaining orderly administration of the laws and preserving existing and inchoate rights should not be used as an instrument for totally emascu-

lating a companion section. As this Court said in *National Labor Relations Board* v. *Jones and Laughlin*, 301 U. S. 1, 30:

> [Court] are not at liberty to deny effect to specific provisions, which Congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute. *The cardinal principle of statutory construction is to save and not to destroy.* [Emphasis added.]

Sections 405 (a) and 405 (b) should, therefore, be considered together so that each may remain intact and function consistently within the area of its applicability as intended by Congress when it wrote the words in question. *Helvering* v. *Credit Alliance Co.*, 316 U. S. 107, 112; *United States* v. *Landram*, 118 U. S. 81, 85.

That there is no inherent conflict between the two sections which would prevent their being applied with consistency is readily apparent from the opening language of each. Section 405 (a) begins: "Nothing contained in this Act, *unless otherwise specifically provided therein* . . ."; and Section 405 (b) begins: "Except as otherwise *specifically provided in title III* . . ." [Emphasis added]. Thus, Section 405 (a) applies unless exception be found elsewhere in the *entire Act*. Such an exception is found in Section 405 (b). Section 405 (b) applies unless exception is

found in *title III*. Section 405 (a) is not a part of title III, and hence it cannot constitute an exception to Section 405 (b).

2. The terms "status", "condition" and "right in process of acquisition", used in Section 405 (a), do not apply to naturalization petitions or to any of the steps preliminary to their filing.

(a) The negative which the court below purported to find resulted solely from its removal from context of the phrase "right in process of acquisition".

> To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute . . . [*United States v. American Trucking Ass'ns*, 310 U. S. 534, 542.]

When such a practice results in materially weakening or nullifying another statute or a separate provision of the same statute, it is particularly inappropriate.

While the published committee reports and Congressional debates do not shed any particular light on why the new phrases "condition", "status", and "right in process of acquisition" were added to Section 405 (a) of the 1952 Act, the reason for their inclusion becomes perfectly clear by a reading of the conflicting opinions in *United States ex rel. Abarasturi v. Cain*, 147 F.

2d 449 (C. A. 2) and *Bertoldi* v. *McGrath*, 178 F. 2d 977 (C. A. D. C.). These two cases involved the interpretation of the parent general savings clause of the 1940 Act, Section 347 (a), as to whether the words "any act, thing, or matter", used in that section, were intended to include a "condition", "status" or "right in process of acquisition", which, under prior law, would have ripened into citizenship by the mere passage of time and without any affirmative act on the part of the prospective citizen.[*] Obviously, these words were included in the general savings provision of the 1952 Act in order to resolve this unresolved conflict in the interpretation of the earlier law, by permitting a period of time commenced before the new Act became effective, where no further affirmative action was required, to continue to run and to ripen into a right *unless the new Act provides otherwise*. It is thus clear that the added words were never intended to

[*] These two cases dealt with the question of whether old or new law controlled the derivation of citizenship by a minor, without court decree, through his parent's naturalization. Under the law in effect immediately prior to the Nationality Act of 1940, the child derived citizenship, provided, among other things, he resided permanently in the United States for five years prior to his twenty first birthday. Act of May 24, 1934, 48 Stat. 797, 8 U. S. C. (1. 34 ed.) 8. Under Section 314 of the 1940 Act, 54 Stat. 1145, 8 U. S. C. (1946 ed.) 714, the residence period had to be completed before the child became eighteen. In both cases the minor would have automatically qualified for citizenship under the old law, but would not have been so entitled if the new law applied.

qualify or limit the explicit provisions and policy set forth in Section 405 (b) regarding the hearing and determination of naturalization petitions. Cf. *In re Katsumi Yoshida*, 113 F. Supp. 631 (D. Haw.).

(2). Just as the mere filing of a naturalization petition does not create a "status, condition [or] right in process of acquisition" within the meaning of Section 405 (a)—if Section 405 (b) is to have any function—neither does the taking of any step preliminary to the filing of such a petition. This is particularly true where the action is that of filing a declaration of intention to become a citizen, a step which has been rendered wholly meaningless, in so far as naturalization is concerned, by the enactment of the 1952 Act.

In its three-year consideration of the revision and codification of the immigration and nationality laws which resulted in passage of the Immigration and Nationality Act on June 27, 1952,[9] Congress gave extensive study to the value of the declaration of intention in the naturalization process and concluded that it no longer served a sufficiently useful purpose to warrant its retention. The declaration of intention procedure was not, therefore, reenacted in the new law. The reasons which led to this decision were substantial and are discussed at length in the legislative his-

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[9] See "Commentary on the Immigration and Nationality Act," 8 U. S. C. A., 1st Vol., pp. 1-91.

tory of the Act.[10] It was recognized, however, that the summary discontinuance of the declaration of intention requirement and the invalidation of declarations then pending would cause severe personal hardship to many aliens whose enjoyment of certain state-, municipally- or privately-controlled privileges, and indeed whose very livelihood in many cases, depended upon their being declarant aliens. Additionally, Congress envisioned resulting administrative confusion on an official level pending amendment of state and local statutes and ordinances containing provisions based on the declaration of intention provision of the Federal statutes.[11]

With this in mind, Congress incorporated in the new law, in Section 334 (f), p. 45, *infra,* a permissive provision for the making of a declaration by any alien of statutory age, but with the express proviso that the declaration was not required as a condition to filing a petition for naturalization. This action, considered in the light of its legislative history, is compelling evidence that Congress intended the declaration of

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[10] See "Revision of Immigration, Naturalization, and Nationality Laws", Joint Hearings before the Subcommittees of the Committees on the Judiciary, Eighty-second Congress, First Session, on S. 716, H. R. 2379, and H. R. 2816, pp. 723–725. See also Senate Report 1515, 81st Cong., 2d Sess., pp. 734, 738, and 744; and House Report No. 1365, 82d Cong., 2d Sess., p. 82.

[11] "Revision of Immigration, Naturalization, and Nationality Laws," *ibid.*, pp. 79–80.

intention to have no legal effect whatever, from and after the effective date of the 1952 Act, as regards naturalization. It also explains the reasons why Congress continued to include "declarations of intention" in the savings provisions of Section 405 (a) of the 1952 Act.

(3). Even if the explicit provisions of Section 405 (b) be disregarded, respondent would not be protected by Section 405 (a). In basing its decision on the premise that respondent had a "right in process of acquisition" which was saved to him by Section 405 (a) of the 1952 Act, the court below stated that it gave no weight to the continuing validity of the respondent's declaration of intention for other purposes, in view of the elimination of the declaration as a condition precedent to naturalization (R. 50). However, if respondent had ever a "right in process of acquisition", within the meaning of the statute, such right could have originated only through the filing of his declaration of intention which was, prior to the 1952 Act, but a statutorily prescribed first step in the naturalization process, 8 U. S. C. (1946 ed., Supp. V) 731. No qualifications, except age and lawful admission for permanent residence, were required and the declaration contained no prayer that the declarant be granted citizenship. Its filing began no action or proceeding. It was only a condition precedent to the subsequent commencement of naturalization pro-

ceedings. The declaration of intention, being solely an instrument of statute, could possess only such limited legal significance as Congress saw fit to give it, and it was subject to elimination at the will of Congress without depriving a declarant of any right, vested or inchoate.

No alien has a "right" to naturalization, certainly not until all statutory requirements have been met. See *Tutun* v. *United States*, 270 U. S. 568, 578. Even assuming *arguendo* that the respondent *could*, for some purposes, have possessed a "right in process of acquisition", as the court held (R. 50), such an inchoate "right" could not have arisen for purposes of naturalization through the filing of his declaration of intention but only through the filing of a petition for naturalization, for only then would his qualifications for citizenship have been placed in issue. The respondent not only did not file but could not have filed a petition for naturalization before the effective date of the 1952 Act because he was not then qualified under the 1940 Act to do so, being some months short of the prescribed five-year residence requirement. Under these circumstances, the respondent could not have had a "right in process of acquisition" within the meaning of Section 405 (a), even if Section 405 (b) had not been included in the savings provisions of the Act.

(4). As already indicated, *supra*, pp. 11–12, the Court of Appeals for the Second Circuit, when faced in *Shomberg* v. *United States*, 210 F. 2d

82, with substantially the same question as confronted the court below, took a diametrically opposite view. That court, striving for a "harmonious interrelation" of the 1952 Act's provisions, followed "the time-honored precept of reading a statute as a whole" and found that, although "[t]he phrase 'right in process of acquisition' appears in a context which if taken alone is obviously broad and quite embracing * * * its general terms must be read with the specific provisions of section 405 (b)" (210 F. 2d at 85). The court in *Shomberg* was concerned with one of the specific exceptions or "priority provisions" to Section 405 (b)—that contained in Section 318—and noted that the latter, as do all similar exceptions, clearly states that it shall apply "[n]otwithstanding the provisions of section 405 (b)". This language would be rendered meaningless, as Judge Clark noted, 210 F. 2d at 84, if subsection (b) were held to be redundant.[12]

The court in *Shomberg* was concerned with Section 405 (b) from a somewhat different angle than was the court below. However, the problem remains fundamentally the same in both cases, viz., whether Section 405 (b) is decisive in determining whether the 1940 Act or the 1952 Act shall control the hearing and determination of petitions after December 24, 1952.

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[12] The court below cited the *Shomberg* case, following a statement that "subsection (b) seems redundant" (R. 49), but did not discuss that decision's analysis.

In enacting the 1952 Act, Congress was apparently so satisfied that Section 405 (b) would be construed in its ordinary sense that when it sought to insure that certain sections of the 1952 Act, if applicable, would govern *all* naturalizations heard and determined after December 24, 1952, irrespective of the date the petitions were filed, and wrote into those sections express provisions designed to achieve that end, such language as "notwithstanding the provisions of section 405 (b)" was invariably used. In no such case was any reference made to Section 405 (a). It was one of those sections—Section 318—which is involved in *Shomberg*. These excepting provisions, to be found in various sections of the 1952 Act, will be virtually nullified under the lower court's ruling. If subsection (a) and not subsection (b) is to determine whether the 1940 or the 1952 Act applies, the words "Notwithstanding the provisions of section 405 (b)", contained in those sections will be rendered meaningless. The ruling of the court below, therefore, is not confined to cases of the instant type but has a far-reaching effect which was apparently not recognized.

(5). In concluding that an alien, who had filed a declaration of intention prior to December 24, 1952, thereby immediately acquired a right to have his qualifications for citizenship determined under the 1940 Act, the court below indirectly

achieved an inequitable and wholly unwarranted result, which was unquestionably not intended by Congress when it enacted Section 405 (b).

This indirect result affects a group of aliens whom Congress in the 1940 Act specially exempted from certain of the general requirements of the Act, because of some particular status. The group included, among others, veterans and spouses of United States citizens. Aliens in this group were exempted from various provisions of the 1940 Act, including that of filing declarations of intention. Their naturalization process commenced with the filing of their petitions for naturalization, following the completion of their required period of residence. Aliens in this group who did not have petitions for naturalization pending on December 24, 1952, are thus denied the privilege of proceeding under the 1940 Act, the provisions of which were in some respects more liberal as to them than are those of the 1952 Act. Only if they had petitions pending on that date can they claim the benefits of the 1940 Act. Conversely, however, by the interpretation adopted by the court below, a large group of *non-exempt* aliens, such as respondent, are being given the benefits of the 1940 Act merely by reason of having filed a declaration of intention, even though not qualified to file petitions prior to the effective date of the new Act.

The resulting inequity can be readily perceived. For example, under certain prescribed circum-

stances, the wife of a United States citizen was entitled to file a petition for naturalization under the 1940 Act without a declaration of intention and after one year's residence, Sec. 310 (a), 54 Stat. 1144, 8 U. S. C. (1946 ed.) 710 (a). Under the 1952 Act, she would require three years' residence, Sec. 319, 66 Stat. 244, 8 U. S. C. 1430. If, on December 23, 1952, she were one day short of the one-year residence period, she would have been barred from filing a petition under the 1940 Act and would have to wait and file under the 1952 Act. Yet, a non-declaration-exempt alien, such as respondent, irrespective of his length of residence or lack of other qualifications, could, if the decision below should be affirmed, have preserved to himself the benefits of the 1940 Act merely by having filed a declaration of intention immediately following his arrival in this country. Thus, what Congress intended as a special benefit to a select group has been automatically converted by the lower court's ruling into what, for practical purposes, amounts to a penalty.

In sum, aside from its nullifying effect on particular provisions, i. e., Sections 311, 313 (a), 315 (a), 318, and 331 (d) of the 1952 Act, the failure of the court below to give to Section 405 (b) the plain meaning which Congress intended, i. e., that only certain persons who had petitions pending on December 24, 1952, are amenable to the

1940 Act, and all others to the 1952 Act, has this specific three-fold effect:

(1) it saves the benefits of the 1940 Act to aliens who were required by the 1940 Act to file declarations of intention and who did so before December 24, 1952, *even though on that date they were not qualified to file petitions for naturalization;*

(2) it deprives of the benefits of the 1940 Act aliens who were expressly exempted from the declaration of intention requirement by Congress, unless they had petitions for naturalization pending on December 24, 1952, even if they were then fully qualified to file petitions;

(3) it makes subsection (b) surplusage with respect to aliens who had filed both declarations of intention and petitions for naturalization before December 24, 1952, because their "right" to naturalization is made dependent upon the filing of the declaration and not upon the subsequent filing of the petition.

Thus, a clear and unambiguous statute, simple of application, has been so distorted by strained interpretation that rights have been improvidently given, inequities have been perpetrated, and the will of Congress has been thwarted. Such a result should not be perpetuated. Cf. *Lau Ow Bew* v. *United States*, 144 U. S. 47, 59.

D. THE WISDOM OR HARSHNESS OF SECTION 405 (B) WAS NOT A MATTER FOR THE COURT'S CONCERN

The opinions of the lower courts reflect an undertone of reluctance to find that Congress had intended what the plain meaning of its 1952 enactment indicates or that it meant to make requirements for naturalization any stricter for those who, like respondent, had complied with a single step preliminary to the filing of a naturalization petition. As Judge Magruder stated, in his concurring opinion, he doubts that "Congress intended to slam the door in the face of such an applicant for citizenship and to make him start all over again" (R. 51). The words of Section 405 (b) are clear, however, and their relationship to other parts of the 1952 Act lends strong support to a literal reading. It is beyond the judicial power, therefore, to "disregard legislative intent in order to provide equitable relief in a particular situation." *Bochm* v. *Commissioner*, 326 U. S. 287, 295. The wisdom of the legislation is the concern of Congress, not the courts. *Queenside Hills Company* v. *Saxl*, 328 U. S. 80, 82; *United States* v. *American Union Transport*, 327 U. S. 437, 457. This Court has said that in enacting naturalization legislation,

> Congress is not trammeled, and it may grant or withhold the privilege of naturalization upon any grounds or without reason, as it sees fit. [*Terrace* v. *Thompson*, 263 U. S. 197, 220.]

Moreover, as we have just shown, the First Circuit's reading itself produces serious inequities, certainly as grave as those the court finds in the government's position. The choices are for Congress, not the courts, and it has made known its will in clear and definite terms in Section 405 (b). The failure of the court below to enforce the statute, as written, was error.

CONCLUSION

For the above reasons, it is respectfully submitted that the judgment of the court below should be reversed and the cause remanded to the District Court with directions to deny respondent's petition for naturalization, but without prejudice to the filing of a new petition by respondent on his completion of the statutory period of actual physical presence.

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APPENDICES—STATUTES INVOLVED

Appendix A: Comparison of Savings Clauses In the 1940 and 1952 Acts

To facilitate comparison, the full text of the savings clauses of the Nationality Act of 1940, Section 347, 54 Stat. 1168, 8 U. S. C. (1946 ed.) 747, and the pertinent portions of the savings clauses of the Immigration and Nationality Act of 1952, 66 Stat. 280, 8 U. S. C. 1101, note, are set forth below in parallel columns.

Nationality Act of 1940	Immigration and Nationality Act of 1952
SAVINGS CLAUSES	SAVINGS CLAUSES
Sec. 347. (a) Nothing contained in either chapter III or in chapter V of this Act, unless otherwise provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization or of citizenship, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any act, thing, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect.	Sec. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes [sic], con-

NATIONALITY ACT OF 1940

SAVINGS CLAUSES

(b) Any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined within two years thereafter in accordance with the requirements of law in effect when such petition was filed.

IMMIGRATION AND NATIONALITY ACT OF 1952

SAVINGS CLAUSES

ditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. When an immigrant, in possession of an unexpired immigrant visa issued prior to the effective date of this Act, makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended, or for adjustment of status under section 4 of the Displaced Persons Act of 1948, as amended, which is pending on the date of enactment of this Act, shall be regarded as a proceeding within the meaning of this subsection

(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

[Subsections (c), (d), and (e) are not here pertinent.]

Appendix B: Other Provisions of the Immigration and Nationality Act of 1952

Sections 311, 313 (a), 315 (a), 318, and 331 (d) are from Title III of the Act and contain the specific exceptions to the savings provisions of Section 405 (b). Section 316 (a) contains the new actual physical presence requirement for naturalization which respondent had failed to meet. Section 334 (f) eliminates the declaration of intention as a condition precedent to filing a petition for naturalization, but permits the filing of such documents for certain other purposes.

These sections provide, in full or in pertinent part, as follows:

> Sec. 311. The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married. Notwithstanding section 405 (b), this section shall apply to any person whose petition for naturalization shall hereafter be filed, or shall have been pending on the effective date of this Act. [66 Stat. 239, 8 U. S. C. 1422.]
>
> Sec. 313. (a) Notwithstanding the provisions of section 405 (b), no person shall hereafter be naturalized as a citizen of the United States—
>
> (1) who advocates or teaches, or who is a member of or affiliated with any organization that advocates or teaches,

opposition to all organized government; or

(2) who is a member of or affiliated with (A) the Communist Party of the United States; (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party or [sic] any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (E) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; (F) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt (G) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-action organization during the time it is registered or required to be registered under the provisions of section 7 of the Subversive Activities Control Act of 1950; or (H) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-front organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such alien establishes that he did not have knowledge or reason to believe at the time he became a member of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have

such knowledge or reason to believe) that such organization was a Communist-front organization; or

(3) who, although not within any of the other provisions of this section, advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who is a member of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under authority of such organization or paid for by the funds of such organization; or

(4) who advocates or teaches or who is a member of or affiliated with any organization that advocates or teaches (A) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or

(5) who writes or publishes or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be cir-

culated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating (A) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or (E) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship; or

(6) who is a member of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subparagraph (5). [66 Stat. 240, 8 U. S. C. 1424 (a).]

SEC. 315. (a) Notwithstanding the provisions of section 405 (b), any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on

the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States. [66 Stat. 242, 8 U. S. C. 1426 (a).]

SEC. 316. (a) No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. [66 Stat. 242, 8 U. S. C. 1427 (a).]

SEC. 318. Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his

immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405 (b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: *Provided*, That the findings of the Attorney General in terminating deportation proceedings or in suspending the deportation of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way upon the naturalization court with respect to the question of whether such person has established his eligibility for naturalization as required by this title. [66 Stat. 244, 8 U. S. C. 1429.]

SEC. 331. * * *

(d) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall cease to be an alien enemy within the meaning of this section upon the determination by proclamation of the President, or by concurrent resolution of the Congress, that hostilities between the United States and such country, state, or sovereignty have ended. Notwithstanding the provisions of section 405 (b), this sub-

section shall also apply to the case of any such alien whose petition for naturalization was filed prior to the effective date of this Act and which is still pending on that date. [66 Stat. 252, 8 U. S. C. 1442 (d).]

SEC. 334. * * *

(f) Any alien over eighteen years of age who is residing in the United States pursuant to a lawful admission for permanent residence may, upon an application prescribed, filed with, and approved by the Service, make and file in duplicate in the office of the clerk of court, regardless of the alien's place of residence in the United States, a signed declaration of intention to become a citizen of the United States, in such form as the Attorney General shall prescribe. Nothing in this subsection shall be construed as requiring any such alien to make and file a declaration of intention as a condition precedent to filing a petition for naturalization nor shall any such declaration of intention be regarded as conferring or having conferred upon any such alien United States citizenship or nationality or the right to United States citizenship or nationality, nor shall such declaration be regarded as evidence of such alien's lawful admission for permanent residence in any proceeding, action, or matter arising under this or any other Act. [66 Stat. 254, 8 U. S. C. 1445 (f).]

Appendix C: Other Provisions of the Nationality Act of 1940, as Amended

Sec. 307. (a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. [54 Stat. 1142, 8 U. S. C. (1946 ed.) 707 (a).]

Sec. 331. An applicant for naturalization shall make, under oath before, and unless prevented by sickness or other physical disability only in the office of, the clerk of court or such clerk's authorized deputy, regardless of the place of residence in the United States of the applicant, not less than two nor more than seven years at least prior to the applicant's petition for naturalization, and after the applicant has reached the age of eighteen years, a signed declaration of intention to become a citizen of the United States, which declaration shall be set forth in writing, in triplicate, and shall contain substantially [certain specified] averments by such applicant: * * * [54 Stat. 1153, as amended, 61 Stat. 121, 8 U. S. C. (1946 ed. Supp. V) 731.]

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